

Request for Proposals

Part B - Contract



Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-684-1681 TTY Relay: 711

Contract Title:	INTERNET SERVICE PROVIDER
RFP Number:	06-084MYP
Buyer:	Michelle Poste, michelle.poste@metrokc.gov , 206-263-4273

Contract Number:	_____	Contractor:	_____
Federal Tax ID:	_____	Requesting Dept.:	_____
Amount:	_____	Fund Source:	_____
Duration:	_____	To:	_____
Work Provided:	_____		

CONTRACT

THIS CONTRACT, made this _____ Day of _____, 200_____, by and between King County, Washington, a home rule charter county and a political subdivision of the State of Washington (hereinafter "County") and _____ with its principal place of business at _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No.: _____

Contract Title: _____

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and services in a timely manner and that its proposal includes all of the functions and features required for the goods and services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and services in accordance with the Contract's terms, Scope of Work and proposal documents; and

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties; and

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price provided herein for the supply of the goods and services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence: **[1]** Contract Amendment; **[2]** the Contract Document which includes: Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Scope of Work, and Attachments B) Price, C) Equal Benefits Declaration Form, D) Personnel Inventory Report, E) Affidavit and Certificate of Compliance, N) 504/ADA Assurance of Compliance, O) Contractor's Insurance Forms; **[3]** RFP Addenda; **[4]** Request for Proposals; **[5]** Best and Final Offer; and **[6]** Contractor's proposal.

COMPANY NAME

KING COUNTY

Authorized Signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

Date Accepted: _____

Date Accepted: _____

Approved as to form only: _____

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DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written Documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate Contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or Scope of Work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 2 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost Analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration. This Contract may be part of a larger County project.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Scope of Work (SOW): A section of the Contract consisting of written descriptions of services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Software, Hardware and services specified under this Contract, including Contract Amendments and settlements.

SECTION 1 - STANDARD CONTRACTUAL TERMS AND CONDITIONS

1.1 Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be Provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for a response.

1.2 Contract Changes

No oral order or conduct by the County shall constitute a change to the Contract. If any Contract Amendment causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every Contract Amendment may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract Amendments do not require notice to sureties by County.

Ref: KC CON 7-8-1 (AEP).

1.3 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A "Notice to Cure" shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or Provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this Contract or a related purchase order to provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

1.4 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

1.5 Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is

so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

1.6 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to Provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and Subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to Provide the Work under this Contract.

1.7 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

1.8 Indemnification and Hold Harmless

A. Patent and Copyright Indemnity

The Contractor shall protect, indemnify, defend and save harmless the County from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the County gives Contractor prompt notice of any infringement claim brought against the County regarding the Software and the County gives Contractor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for the County the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Contractor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the County. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims. Contractor shall have no liability to indemnify or defend the County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County but not by the Contractor; or (ii) use of the Software by other than in accordance with the Documentation. If the County is required to defend itself or enter into a settlement agreement due to Contractor's failure to defend, Contractor shall indemnify the County for its costs and expenses as well as any judgment entered against the County.

B. Indemnification For All Other Actions

Contractor shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to

Persons and/or damage to tangible property, arising out of or in any way resulting from the acts or omissions of the Contractor its officers, employees, subcontractors and/or agents. Contractor's indemnification obligation shall include but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. Limitation of Liability

Except for the County's intentional and willful violations of Contractor's intellectual or proprietary rights, which can be attributed to the County management, and injuries to persons by either party, neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under this Contract shall be limited to (___ X times) the value of the Contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

1.9 Applicable Law and Forum

This Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed and prosecuted in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

1.10 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3. Any Person having an existing Contract with the County or seeking to obtain a Contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current Contracts with the County canceled and shall not be able to bid on any other County Contracts for a period of two (2) years.

C. Disclosure of Current and Former County Employees

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract.
3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

Ref: K.C.C. 3.04.015, 3.04.20, 3.04.30, 3.04.035, 3.04.060.

1.11 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section.

The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent to mediation, arbitration or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

1.12 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S.

District Court for the Western District of Washington, in Seattle. Nothing in this subsection precludes any party from seeking relief at any time from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

1.13 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).
3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. Proof of Compliance with Contract

The Contractor shall, upon request, provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

Ref: KCC 2.20.035, 2.20.040, 2.20.050, RCW 43.09.050, 43.88, 42.40.020, 42.40.040, 42.160.

1.14 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The County does not accept any responsibility or involvement in the purchase orders or Contracts issued by other public agencies.

1.15 Recycled Products Policy

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the contract and shall, whenever practicable, use both sides of the paper. (Reference: KCC 10.16 & King County Executive Policy CON 7-1-2).

1.16 Nondiscrimination and Equal Employment Opportunity

A. Nondiscrimination in Employment and Provision of Services

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County Contracts or to obtain or compete for Contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with Subcontractors and suppliers, the Contractor shall not discriminate against any Person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

Ref: KCC 12.16.020.

C. Compliance with Laws and Regulations

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits

The County may, at any time, visit the project site, Contractor's and Subcontractors' offices to review records related to the solicitation, utilization, and payment to Subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this section. The Contractor shall Provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all Work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to Subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to the County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of Contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

F. Compliance with Section 504 of the Rehabilitation Act of 1973

For all Contracts providing consulting, maintenance, training or other services, the Contractor shall complete a Disability Self-Evaluation Questionnaire, Attachment N. The 504/ADA Disability Assurance of Compliance will cover all programs and services offered (including any services not subject to this Contract) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Contractor shall complete a 504/ADA Disability Assurance of Compliance within ten (10) Days after receiving written notice of selection. The Contractor shall retain a copy of the completed 504/ADA and submit to the Buyer the original final two (2) signed pages titled "504/ADA Disability Assurance of Compliance", which will be attached to the Contract.

Ref: KCC 12.16.060 D.

1.17 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

1.18 Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

1.19 Equal Benefits to Employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of Contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The Contractor shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a Contract. The EB Compliance forms and Ordinance 14823 are available online at: <http://www.metrokc.gov/procurement/forms/gs.aspx>.

SECTION 2 - SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2.1 Execution of the Contract

The documents constituting the Contract between the County and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 2. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County shall issue Purchase Orders detailing the Work to be performed.

The Contract may be executed in counterparts, any of which shall be deemed an original and which shall together constitute one Contract.

2.2 Contract Term

The initial term of this Contract shall be one (1) year, and may be extended for an additional term in one (1) year increments, commencing on the effective date of the Contract and subject to the termination provisions at subsection 1-4, Termination for Convenience/Default/Non-Appropriation. The Warranty Period begins at Final Acceptance for a period of twelve (12) months. Upon the completion of the Warranty Period, the Maintenance Agreement runs from year to year unless terminated as described in this Contract. The maximum term for this Contract, consisting of the base period plus extensions, is five (5) years unless extended by written agreement signed by all parties, except that the Software License shall be perpetual.

2.3 Notices

All notices or Documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.

For Project Management related notices or Documentation:

KING COUNTY	CONTRACTOR
Project Manager – Sonja Rowland	
KC Information & Telecommunication Services	
700 5 th Avenue, Suite 2300	
Seattle, WA 98104	
206-296-0313	
sonja.rowland@metrokc.gov	

For Contract related notices or Documentation contact:

King County Procurement and Contract Services Section	
M.S. EXC-FI-0871	
Exchange Building, 8 th Floor	
821 Second Ave.	
Seattle, WA 98104-1598	
Buyer – Michelle Poste	
(206) 263-4273	
michelle.poste@metrokc.gov	

2.4 Payment Procedures

A. Invoices

The Contractor for Work Accepted by the County shall furnish invoices to:

King County Information & Telecommunications Services
MS: KEY-ES-2300
700 5th Avenue, Suite 2300
Seattle, WA 98104-1598

Important – When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract, provide: item number, quantity, description, Contract price and when applicable provide the manufacture, list price and discounts. For services, invoices shall identify either milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

The County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list or this Contract. If prior acceptance of the higher price has not been done by the County, the invoice may be rejected and returned to the Contractor for a correct invoice.

Failure to comply with these requirements or to provide an invoice in conformance with the contract may delay payment.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within thirty (30) Days from the receipt of each payment the Contractor receives from the County.

2.5 Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

Ref: Article VIII, § 7 of the Washington State Constitution.

2.6 Purchase Orders

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in Attachment B. The purchase orders issued by the County may reflect agreed to modification(s) of Contract terms, funding or other matters subject to subsection 1-2, Contract Amendments.

2.7 Pricing

Prices shall remain firm for the duration of the initial Contract period. Reasonable price changes based on market conditions and price/cost analysis may be made after the initial Contract period. The Contractor shall supply documentation satisfactory to King County such as documented changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price change(s).

King County will evaluate this information to determine if revising the pricing is considered fair and reasonable to the satisfaction of King County. Requests for any such change are to be made in writing to the Buyer in the Procurement Services Division office. A contract amendment issued by the County will institute the price adjustment and establish the effective date for the new prices.

2.8 Acceptance Process

The County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Contractor will give the County "notice of completion" of Work related to a specific milestone following the Contractor's completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. Acceptance Process. Upon completion of the milestone deliverables, the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the milestone guidelines. After notice by Contractor of completion of the milestone, County will issue a written notice of milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.
- B. Correction of Deficiencies Process. If a deliverable is rejected, Contractor will have a commercially practicable time to correct items documented in the County's notification of rejection. Following the delivery of Contractors' notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Contractor's second attempt to correct the Work and no clear plan can be agreed upon between the County Project Manager and the Contractor's Project Manager, the County will determine the appropriate corrective actions.

2.9 Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.
- B. Warranty Term. The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors. The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

2.10 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

2.11 Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

2.12 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

2.13 Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public.

Ref: RCW 42.17.

If a Contractor considers any portion of the Work, including Software, data and related materials, delivered to the County to be protected under the law, the Contractor shall clearly identify such items with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents. If the material is not exempt from public disclosure law, the County shall notify the Contractor of the request and allow the Contractor fifteen (15) Days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing this Contract, the Contractor assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

2.14 Changed Requirements

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 1-2, Contract Amendments.

2.15 Patents, Copyrights and Rights in Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other Work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page, (or in such case of maps, in the name block), as may be requested by the County. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

2.16 HIPAA – Protecting Patient Privacy

The Work under this Contract may require compliance with "The Health Insurance Portability and Accountability Act of 1996" (HIPAA). Information on this Act can be found at the U.S. Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

SECTION 3 - DEPARTMENT OF HOMELAND SECURITY AND URBAN AREA SECURITY INITIATIVE REQUIREMENTS

This Contract is funded by the Department of Homeland Security ("DHS") by and through its Urban Area Security Initiative ("UASI"). Neither the DHS, UASI nor the Federal Government shall be a party to any subagreement nor to any solicitations or request for proposals. This Contract shall be subject to the applicable grant agreement between DHS and the State of Washington Military Department and the subgrant agreement between the County and the State of Washington Military Department. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the DHS and UASI terms and conditions, a copy of which is attached hereto as Exhibit ____.

3.1 Changes in Federal laws, Regulations, Policies and Administrative Practices

New federal laws, regulations, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well, subject to the Contract Changes provisions of this Contract.

3.2 Federal Changes

The Contractor agrees to comply with all applicable DHS and UASI regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the grant and subgrant agreements relating to DHS and UASI with the County, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to comply shall constitute a material breach of this Contract.

3.3 Compliance With Applicable Law

The Contractor and all subcontractors shall comply with, and the DHS is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act of 1990 (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 C.F.R. Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations.

The provisions include, in part, certain standard terms and conditions required by the U.S. Department of Homeland Security, whether expressly set forth in the following Contract provisions. The Contractor shall comply with OMB Circular **A-87**, Cost Principles for State, Local, and Indian Tribal Governments; OMB **A-102**, Grants and Cooperative Agreements with State and Local Governments; and **A-133**, Audits of States, Local Governments, and Non-Profit Organizations.

Ref: Section 17 of UASI Homeland Security subgrant No. E04-055

3.4 No Federal Government Obligations to Third Parties

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The above clause shall be included in each subcontract financed in whole or in part with Federal assistance provided by DHS. The clause shall not be modified, except to identify the Subcontractor who shall be subject to its provisions.

3.5 Equal Employment Opportunity

During the performance of this Contract, the Contractor shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

- A. Nondiscrimination in Employment: The Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- B. The Contractor shall take affirmative action to ensure that employees are employed and treated during employment without discrimination because of their race, color, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment selection for training, including apprenticeships and volunteers.

Ref: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 *et seq.*; 29 CFR Part 1630; 41 CFR § 60-1.4.

3.6 Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC § 2000d) The Federal Government and or the County has a right to seek judicial enforcement with regard to any matter arising under Title IV of the Civil Rights Act and implementing regulations.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

- A. Nondiscrimination
The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, creed, gender, disability, age or national origin in the selection and retention of Subcontractors. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

Ref: 20 USC §§ 1681 *et seq.*, Age Discrimination Act of 1975, as amended, 42 USC §§ 6101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§ 12101 *et seq.*
- B. Solicitations for Subcontracts, Including Procurements of Materials and Equipment
In all solicitations either by competitive proposal or negotiation made by the Contractor for Work to be performed under a subcontract each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, gender, disability, age or national origin.
- C. Information and Reports
The Contractor shall Provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined to be pertinent to ascertain compliance with

such regulations, orders and instructions. The Contractor shall maintain all required records for at least six (6) years after the County makes final payment and all other pending matters are closed.

D. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs A through D of this section in every subcontract, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the DHS may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

3.7 Audit and Inspection of Records

Non-federal contractors receiving financial assistance of \$300,000 or more in federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) (Revised June 27, 2003) Circular A-133- Audits of States, Local Governments, and Non-Profit Organizations. Non-federal entities that spend less than \$300,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133.

Contractors required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) developed by the Comptroller General and the OMB Compliance Supplement.

The Contractor has the responsibility of notifying the State Auditor's Office and requesting an audit. Costs of the audit may be an allowable grant expenditure.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its subrecipients. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to Department requests for information or corrective action concerning audit issues. The DHS reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

The Contractor must send a letter stating there has been a single audit completed and there were no findings or if there were findings, the letter should provide a list of the findings. The Contractor must send this letter no later than nine (9) months after the end of the audit period to:

**Finance Director
State Military Department
Finance Services, Building #1 TA-20
Camp Murray, WA 98430-5032**

In addition to sending a copy of the audit, the Contractor must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

The Contractor shall include the above audit requirements in any subcontracts.

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive proposal procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all Work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for six (6) years after the County makes final payment and all other pending matters are closed.

Ref: UASI Homeland Security subgrant No. E04-055

3.8 Privacy

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any contractors, third party contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract shall make this Contract subject to termination. The Contractor agrees to include this clause in all subcontracts awarded under this Contract that involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

3.9 Access Requirements for Individuals with Disabilities

The County and the Contractor are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended and 29 USC § 794, and the following regulations and any amendments thereto:

- A. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- B. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- C. U.S. General Services Administration regulations, "Construction and Alteration of Public Buildings," 41 CFR Subpart 101-19;
- D. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- E. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 CFR Part 64, Subpart F.

3.10 Interest of Members of or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

3.11 Certification Regarding Debarment, Suspension and Other Responsibility Matters

By signing and submitting this Contract, the Contractor, is providing the signed certification set out below. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government and County, may pursue available remedies, including suspension and/or debarment.

The Contractor shall provide immediate written notice to County if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. Contractor may contact County for assistance in obtaining a copy of those regulations.

The Contractor agrees by signing this Contract, it shall not knowingly enter into any covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the County.

The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, County may pursue available remedies including suspension and/or debarment. 49 CFR Part 29.

3.12 Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility

By signing this Contract, the Contractor agrees that it shall not knowingly enter into any subcontract with an entity or Person who is debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds.

Each subcontract, regardless of tier, shall contain a provision that the Subcontractor shall not knowingly enter into any lower tier subcontract with a Person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds

The Contractor shall require each Subcontractor, regardless of tier, to immediately Provide written notice to the Contractor if at any time the Subcontractor learns that its, or a lower-tier certification was

erroneous or has become erroneous by reason of changed circumstances. The Contractor may rely upon the certifications of the Subcontractors unless it knows that a certification is erroneous. The Contractor's knowledge and information regarding any Subcontractor is not required to exceed that which is normally possessed by a prudent Person in the ordinary course of business.

3.13 Disclosure of Lobbying Activities

Contracts in excess of \$100,000 require that a Certification Regarding Lobbying, and Disclosure of Lobbying Activities (if appropriate), be completed and submitted to the County with the Contract, as required by 49 CFR Part 20, "New Restrictions on Lobbying". Please contact the County for these forms.

The Contractor certifies that it shall not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 et seq., who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

Ref: 49 CFR Part 20, modified as necessary by 31 USC § 1352.

3.14 False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., and/or 49 USC § 5307(n)(1), as may be appropriate. The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

3.15 Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq., and 49 CFR Part 18.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

3.16 Environmental Requirements

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq. and 40 CFR Part 1500, et seq.

3.17 Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to Provide a competitive preference for products and Services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described

in the United States EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

3.18 Patent Rights

If any invention, improvement, or discovery of the Contractor or any of its Subcontractors is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States or any foreign country, the Contractor agrees to notify the County immediately and Provide a detailed report. The rights and responsibilities of the Contractor and the County with respect to such invention, improvement or discovery shall be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, academic institution, individual), the County and the Contractor agree to take the necessary actions to Provide, through DHS, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor also agrees to include the requirements of this section in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance Provided by DHS.

Ref: 49 CFR Part 19, Appendix A, Section 5

SECTION 4 - INSURANCE REQUIREMENTS

4.1 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County shall receive notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the County, deliver to the County all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

4.2 Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below.
By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting insurance for professional liability/errors and omissions. Professional liability/errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims Made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.

- B. Minimum Scope of Insurance
Coverage shall be at least as broad as:

- 1. General Liability
Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.
- 2. Automobile Liability
Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be provided.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

4.3 The Contractor shall maintain limits no less than, for:

General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in the Aggregate.

Workers' Compensation: Statutory requirements of the state of residency.

Employers Liability Stop Gap: \$1,000,000.

A. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

B. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form. (CG 20 10 11/85 or its equivalent)

To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.

The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

C. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall fail to meet the above stated requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

D. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.**

E. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

F. Endorsements

Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

ATTACHMENT R

NON-DISCLOSURE AGREEMENT

(Contractor Name) (Contractor) hereby enters into this Non-Disclosure Agreement in consideration of compensation received from King County pursuant to Contract No. _____.

- I. In order to perform the contractual duties for King County, Contractor may need to receive certain proprietary products, documentation, software and source codes, the rights to which are either owned by King County or are the subject of a license agreement between King County and the owner (hereinafter referred to as "Proprietary Information"). Contractor therefore agrees to the following:
 - A. Contractor shall not copy any Proprietary Information unless expressly authorized in writing by King County.
 - B. Contractor shall not convey or disclose any Proprietary Information to any other person or entity unless expressly authorized in writing by King County.
 - C. Contractor shall not use, copy, convey or disclose Proprietary Information except in the course of performing contractual duties for King County.
 - D. Contractor shall take all steps to prevent unauthorized use or disclosure of Proprietary Information.
 - E. Upon demand made at any time by King County and upon any termination of this contract, Contractor shall immediately return to King County all Proprietary Information and any copies thereof.
 - F. Documents may be subject to one or more exemptions under the State of Washington Public Disclosure Act, RCW 42.17.310(1). These documents contain, or are stamped with, the following text:

DO NOT COPY, FORWARD OR RELEASE THIS DOCUMENT WITHOUT WRITTEN PERMISSION FROM KING COUNTY AS IT CONTAINS INFORMATION THAT IS CONFIDENTIAL, PROPRIETARY OR EXEMPT UNDER THE STATE PUBLIC DISCLOSURE LAWS.
- II. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- III. This Agreement shall be binding upon the parties, their successors and assigns. Neither party shall assign this Agreement without the other party's written consent.
- IV. The terms of this Agreement shall survive any termination of the contract with King County or the departure for any reason of Contractor's employees, subcontractors or agents.
- V. Contractor may disclose, publish, disseminate, and use Information that is:
 1. already in its possession without obligation of confidentiality; or
 2. developed independently; or
 3. obtained from a source other than King County without an obligation of confidentiality or an exemption to the Public Disclosure laws; or
 4. publicly available when received, or subsequently becomes publicly available through no fault of the Contractor; or
 5. disclosed by King County to another without an obligation of confidentiality or an exemption to the Public Disclosure laws.

Contractor may use in its business activities the ideas, concepts and know-how contained in King County's Information which are retained in the memories of Contractor's employees, subcontractors or agents who have had access to the Proprietary Information under this Agreement.

Notwithstanding the foregoing, Contractor warrants and represents that its employees, subcontractors and agents shall abide by each and every term of this Non-Disclosure Agreement.

- VI. Information disclosed under this Agreement will be subject to this Non-Disclosure Agreement for two years following the termination or expiration date of this Contract, except the following types of information which shall never be disclosed unless in conformance with the Washington Public Disclosure Act or valid court order:
1. King County personnel data such as social security numbers, home telephone numbers and home addresses
 2. Security vulnerability assessment information
 3. Documents containing IP addresses
 4. Detailed network diagrams containing topology and physical locations
 5. Third party proprietary or confidential information such as source code, software, software system documentation or other proprietary or confidential information as described in the third party contract with King County.
- VII. Any modification or amendment of this Agreement shall be in writing and executed by duly authorized representatives of the parties.

AGREED TO:
(Name of Contractor)

By: _____
Authorized Signature

Print Name:

Date: _____

Contractor Address:

AGREED TO:
King County

By: _____
Authorized Signature

Print Name:

Date: _____